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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

[Redacted]

B2

DATE: **JUL 26 2012** Office: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on April 12, 2011. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on May 13, 2011. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of advance computation in biological engineering, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).¹ The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. See section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and a number of documents, including: (1) online printouts and promotional material relating to bioengineering courses at various universities, (2) an August 27, 2010 letter from [REDACTED] at the University of Maryland, (3) a December 19, 2005 online article from the University of Maryland website, entitled [REDACTED] Established by Gift of [REDACTED] [REDACTED]” (4) a September 13, 2010 *Wall Street Journal* online article, entitled [REDACTED] (5) a May 6, 2010 letter from [REDACTED], (6) a 2009 *Biomedical Computation Review* article, entitled “[REDACTED]” (7) online printouts from the companies ERDAS and Leica Geosystems, and (8) salary information from fldatacenter.com and Inside Higher Ed. The petitioner had previously provided some of these documents to the director.

For the reasons discussed below, the AAO finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the

¹ On appeal, counsel asserts that the director erred because she failed to evaluate the petition under the correct field of endeavor. The AAO disagrees. Specifically, in his March 2011 response to the director’s Request for Evidence (RFE), counsel stated that the petitioner “is a prominent and leading professor and scholar in the field of advanced computation in biological engineering.” As such, the director evaluated the petition based on the petitioner’s ability in bioengineering, stating that the petitioner aimed “to perform services as an associate professor of bioengineering.” In the alternative, the AAO will consider the petitioner’s ability in the field of advance computation in biological engineering.

regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the AAO finds that the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner's appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement, that is a major, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of the

evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent “final merits determination.” *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO’s evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that “the proper procedure is to count the types of evidence provided (which the AAO did),” and if the petitioner failed to submit sufficient evidence, “the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the AAO concurs with the director’s finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top of the field or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. Prior O-1 Visa

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep’t of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, No. 03-1083299, 99 F. A’ppx 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). It would be absurd to

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 51 (2001).

III. ANALYSIS

A. Evidentiary Criteria³

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, counsel asserts that the petitioner meets this criterion. The evidence in the record references the petitioner's following achievements:

1. 2002 National Science Foundation (NSF)'s CAREER Award,
2. 2004 Northeast Agricultural and Biological Engineering Conference's (NABEC) Young Engineer of the Year Award,
3. 2006 American Society of Agricultural and Biological Engineers' (ASABE) Information and Electrical Technologies Division (IET) Select Paper Award, in recognition of authorship of an outstanding 2006 annual meeting paper,
4. 2008 ASABE Certificate of Appreciation, in recognition of substantial contributions as an invited reviewer for the IET Select Paper Award,
5. 2004 and 2005 University of Maryland's Certificates of Appreciation, in recognition of the petitioner's participation as a mentor, and
6. 2005 Charles Herbert Flowers High School's Mentor Appreciation Certificate.

³ The petitioner does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

Based on the petitioner's evidence, the AAO finds that the petitioner has not met this criterion, because none of the awards or prizes the petitioner received constitutes a nationally or internationally recognized prize or award for excellence in the field of advance computation in biological engineering. First, NSF's CAREER Award is not a nationally or internationally recognized prize or award for excellence. According to online printouts from the NSF, the CAREER Award, also known as the Faculty Early Career Development Program, is presented to "faculty members beginning their independent careers . . . to enable [them] to develop careers as outstanding researchers and educators who effectively integrate teaching, learning and discovery." Similarly, according to University of Maryland's fall 2002 material entitled "Information Technology: Setting the Pace for the Future," the CAREER Award or program "is presented annually to junior faculty members who show promise in their research activities and demonstrate innovative ideas for education." Both the NSF online printouts and the University of Maryland material show that the award or program is not aimed to recognize an awardee's excellence in the field. Rather, the award is to encourage the awardee to "develop [into an] outstanding researchers."

Moreover, the petitioner has not provided evidence on the total number of "young faculty members" applied for the award or program or the number of people selected for the award or program in 2002. Neither [REDACTED] who stated that the petitioner "is one of a handful of agricultural and biological engineers who have ever received" NSF's CAREER Award, nor [REDACTED], a professor at the [REDACTED] who stated that the petitioner's "NSF CAREER Award . . . is typically awarded to less than 20% of its high-caliber applicants with less than 10% of the top group of awardees from underrepresented groups" sheds light on the number of award applicants or selectees in 2002.

In addition, the materials suggest that the "award" is actually a research grant. Research grants are not awards for excellence; rather they simply fund a scientist's work. Every successful scientist engaged in research, of which there are hundreds of thousands, receives funding from somewhere. Obviously the past achievements of the principal investigator are a factor in grant proposals. The funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, a research grant is principally designed to fund future research, and not to honor or recognize past excellence.

Regardless, the petitioner has not presented a copy of the award certificate, a letter or any documentation from NSF showing that he was a selectee for the award or program in 2002. The regulation at 8 C.F.R. § 103.2(b)(2) provides that the non-existence or other unavailability of required evidence creates a presumption of ineligibility. The same regulation also provides the procedure for documenting the non-existence or unavailability for required evidence and the requirements for submitting secondary evidence or affidavits. The petitioner has not complied with that regulation or submitted secondary evidence or affidavits.

Second, the AAO finds that the petitioner's [REDACTED] is not a nationally or internationally recognized award or prize for excellence in the field of advance computation in biological engineering. According to online printouts from NABEC, the [REDACTED]

██████████ is “for outstanding accomplishments in research, design, extension or other areas in the field of agricultural and biological engineering.” The printouts further provide that the award is open only to NABEC members who are at the age of forty or under. Counsel claims that the “award is not minimized because it required the winner to be a member and under the age of 40.” While the AAO acknowledges the possibility that an age-restricted award or prize could be nationally or internationally recognized, it is the petitioner’s burden to demonstrate that each award is so recognized. Neither ██████████, who stated in his May 6, 2010 letter that the petitioner was the only scientist in 2004 to receive NABEC’s ██████████, nor any other evidence in the record indicates the number of people eligible for the award or were nominated for the award in 2004. Ultimately, the petitioner has not demonstrated that the award is recognized beyond the organization that issued it through objective or independent evidence such as but not limited to media coverage of the award selections.

Third, the AAO finds that the petitioner’s ██████████ is not a nationally or internationally recognized award or prize for excellence in field of advance computation in biological engineering. The petitioner has filed a copy of the ██████████ award certificate, indicating that the award was for his article ██████████. ██████████ also stated in his May 6, 2010 letter that the petitioner was awarded ██████████ for his ██████████ manuscript. The record, however, lacks evidence on the number of people eligible for this award or the nomination or selection process for the award in 2006. Similarly, counsel’s brief on appeal fails to point to any evidence in the record relating to the nomination or selection process of the award, or cite to sufficient evidence in the record showing that the ██████████ is a nationally or internationally recognized award or prize for excellence.

Fourth, the petitioner has not provided sufficient evidence showing that any of his other achievements constitute nationally or international recognized awards or prizes for excellence. These achievements include (1) the ██████████, (2) ██████████, (3) ██████████, (4) scholarship from ██████████ – a scholarship that ██████████, claimed to have been awarded to the top 10-20% of graduate students in ██████████ (5) ██████████ third place finish in the ██████████. (now part of ██████████) ██████████, and (6) the petitioner’s participation in symposiums and conferences. The record lacks sufficient evidence showing that the awards or the petitioner’s participation in symposiums and conferences constitute nationally or internationally recognized awards or prizes of excellence. Specifically, the petitioner has not presented evidence on either the nomination or selection process for the awards or symposium or conference participation, or any other indication that they constitute nationally or internationally recognized awards or prizes for excellence.

Accordingly, based on the petitioner’s evidence, the AAO finds that he has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for

excellence in the field of endeavor. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(i).

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In her April 12, 2011 decision, the director found that the petitioner has not met this criterion. On appeal, counsel has not challenged this finding. Accordingly, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

In her April 12, 2011 decision, the director found that the petitioner has met this criterion. Upon a review of the evidence in the record, including the petitioner's [REDACTED] in recognition of substantial contributions as an invited reviewer for the [REDACTED] the AAO concurs with the director's finding. In short, the petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, counsel asserts that the petitioner meets this criterion based on his development of the [REDACTED] and that "[the petitioner] has been cited more than 5 times for his 10 scientific works and his scientific manuscripts have been cited more than 100 times." The petitioner has provided a number of documents to show he meets this criterion. They include: (1) a May 6, 2010 letter from [REDACTED], a professor and [REDACTED] (2) a May 6, 2010 letter from [REDACTED], a professor of [REDACTED] (3) an April 29, 2010 letter from [REDACTED] a professor at [REDACTED] (4) an April 20, 2010 letter from [REDACTED], a professor at the [REDACTED] (5) an online printout from SourceForge.net showing that from October 2006 to March 2011, the petitioner's [REDACTED] was downloaded 1,509 times, (6) an online printouts from [REDACTED] showing that the petitioner's articles have been cited by other scientists, and (7) the petitioner's curriculum vitae, dated May 2010.

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion, because he has not shown contributions of major significance. First, counsel has not pointed to any independent and objective evidence in the record establishing that the petitioner developed the [REDACTED] software. The SourceForge.net article entitled [REDACTED] states that [REDACTED] is presently developed at the [REDACTED], [REDACTED], Part of its development (until 02/07) was based upon work supported by the National Science Foundation under [REDACTED]. The article, however, does not mention the petitioner by name. Although the record contains evidence that the petitioner received a [REDACTED], it does not specifically show that it was the [REDACTED]. Moreover, although counsel has provided evidence that the software was downloaded [REDACTED] times from October 2006 to March 2011, counsel has not provided information on the people who downloaded the software, i.e., whether they are scientists, or more importantly, whether they are experts in the field of advance computation in biological engineering who have been influenced by the software, or whether they are laypersons. Not every piece of usable software is a contribution of major significance in the designer's field. Counsel also has not provided evidence on whether all the downloads were completed by different people or entities, or whether some downloads were completed by the same people or entities. In short, the AAO has insufficient evidence to find that the [REDACTED] software constitutes a contribution of major significance in the field.

Second, the AAO finds that the petitioner has not shown through the citations of his articles or manuscripts that he has made contributions of major significance in the field. While the petitioner has a large number of citations in the aggregate, none of his individual articles have garnered more than 20 citations individually and most have garnered only between one and five citations each. The petitioner has not presented any evidence showing that this citation level is indicative of or consistent with a scientist who has made contributions of major significance in the relevant field. Indeed, the petitioner has not provided any evidence on how frequently an average scientist's writings are cited, or how frequently the writings of a scientist who has made contributions of major significance are cited. As such, the AAO cannot make the relevant comparison when considering the petitioner's citations.

Third, although the letters from the petitioner's references show that the petitioner is a capable scientist, they do not show that his research constitutes contributions of major significance. Specifically, although [REDACTED] stated that the petitioner's research "provide[d] new insight that has been useful in minimizing the negative biological and environment aspects of pesticides in the environment," he did not state that the "new insights" have already impacted the field at a level consistent with a contribution of major significance. In other words, he has not stated that the petitioner research constitutes contributions of major significance in the field.

Similarly, although [REDACTED] stated that the petitioner "developed an advanced software program to solve nonlinear, unsaturated flow equations by the method of finite differences, and used it to do overnight runs on groups of PCs in [] computer labs," he did not state or provide support showing that the program constitutes a contribution of major significance. [REDACTED] claim

that the petitioner's research is "applicable to cancer treatment (managing cancer cells), the control of invasive species, bioterrorism prevention (controlling bioagents), and environmental protection (controlling pollutant movement)" is insufficient to show "major significance" because there is no evidence in the record that independent researchers in the petitioner's field have already used the petitioner's program in any of the mentioned areas and that the program has led to success in those areas.

According to [REDACTED], the petitioner's research addresses "stochastic transport modeling, nanobiotechnology, embedded control systems, decision support systems, finite elements and image meshing." [REDACTED] further stated that the petitioner's "broad focus includes human health, environmental and ecological phenomena and agricultural science that impact health as well as biomedical devices and tissue engineering." Although [REDACTED] stated that the petitioner's research has a broad reach, he did not state that the research has already been proven useful or significant in the various areas, let alone proven to be a contribution of major significance in any of the areas.

According to [REDACTED], the petitioner "has achieved top notoriety for his research on unified computational techniques that apply uniformly across Biological Engineering sub-disciplines, from ecological engineering, through bioenvironmental engineering to biomedical engineering." [REDACTED] further stated that the petitioner "pioneered a state-of-the-art Decision Support System (DSS) approach for the control of environment pollutants in watersheds that is so flexible that he could also apply it to the control of active biological agents in landscapes and to the control of diseases in living organisms." [REDACTED] stated that "these are precisely the type of planning tools that [are] need[ed] to help protect [against] a broad range of potential biological disasters in the environmental, ecological, bioterrorism and medical areas, and to help efficiently mitigate the aftermath of such disasters." Notwithstanding [REDACTED]'s statements, the record lacks evidence that the petitioner's research has had an impact in the field of advance computation in biological engineering, let alone an impact that constitutes a contribution of major significance in the field. Moreover, the AAO notes that the petitioner has not provided sufficient objective and independent evidence indicating that the petitioner has had made an impact in the field such that he has made a contribution of major significance.

Fourth, in his brief filed in support of the appeal, counsel asserts that the petitioner's "advanced computation techniques have been used to conduct significant research projects where [the petitioner] acted as a Principal Investigator or Co-Principal Investigator with grants totaling US\$884,574 from institutions including government agencies such as [REDACTED] and [REDACTED], within the span of 9 years." Counsel then lists a number of projects. Initially, the AAO notes that the information relating to the petitioner's involvement in the listed projects appears to be from the petitioner's May 2010 curriculum vitae. Counsel, however, has not presented any independent or objective evidence to support the petitioner's involvement in the projects. USCIS need not rely on self-promotional material. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of*

Treasure Craft of California, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, a receipt of a grant to develop a computational tool, technique or program is insufficient to show the significance of the developed tool, technique or program once developed. In other words, evidence that the petitioner has received funds to conduct research does not mean that the petitioner's ultimate research findings constitute contributions of major significance in the field.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).⁴ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y. 1997). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

⁴ In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of advance computation in biological engineering. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The evidence shows that the petitioner has authored: (1) a [redacted] entitled "[redacted]" (2) a [redacted] article entitled "[redacted]" (3) a [redacted] entitled "[redacted]" (4) a [redacted] article entitled "[redacted]" and (5) a chapter in the 2001 book [redacted] entitled "[redacted]" Based on the evidence in the record, the AAO concurs with the director's finding that the petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, counsel asserts that the petitioner has performed in a leading or critical role for [redacted]. Specifically, counsel states that "while working [as an assistant professor] at the [redacted], a school whose engineering program ranks [redacted] in the nation . . . , [the petitioner] received the [redacted]." Counsel further states that the director erred in "fail[ing] to adequately consider evidence of open-source software called [redacted] that [the petitioner] developed while at the [redacted]."

A leading role should be evident based not only on the petitioner's title but the duties associated with the position. A critical role should be apparent from the petitioner's impact on the organization or establishment as a whole. The petitioner did not submit an organization chart demonstrating how his role fits within the hierarchy of the [redacted]. Rather, the petitioner relies on the petitioner's funding grant and letters.

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion. First, counsel has not shown that by receiving the [redacted], the petitioner performed a leading or critical role for the [redacted]. Indeed, although the [redacted] states that the school "[is] honored once again this year with a significant number of CAREER Award recipients," it does not state that any of the award recipients, including the petitioner, performed a leading or critical role for the school. Second, the August 27, 2010 letter from [redacted], similarly does not show that the petitioner has performed a leading or critical role for the [redacted]. In

his letter, [REDACTED] stated that the expiration of the petitioner's [REDACTED] impacted the school's bioengineering department negatively. Specifically, the petitioner "[was] barred from campus, and most critically [could not] teach his scheduled class [in fall 2010,] affecting approximately 20 students who had registered for his course [REDACTED], a course that is in such demand that [the school] chose to offer it [in fall 2010], 'off sequence,' so that students would not be unduly hindered in their progress to degree completion." He further stated that "[the petitioner's] inability to teach the course, and the absence of other professors to pick up this course, [resulted in the school] scrambling to work out something for these students – not the desired outcome for any concerned." Although the letter indicates that Bioengineering Department had to "work out something for [the] students," it does not state that the department was unable to find a replacement professor. Moreover, even if the AAO were to conclude that the petitioner has performed a leading or critical role for the Bioengineering Department, it would find that the petitioner has not met this criterion, because he has not shown that he has performed a leading or critical role for the [REDACTED] an organization or establishment that has multiple academic departments.

Third, the petitioner's development of the [REDACTED] software is not indicative that he has performed a leading or critical role for the [REDACTED]. As discussed, counsel has not pointed to any evidence in the record establishing that the petitioner developed the software. The SourceForge.net article entitled "[REDACTED]" states that "[REDACTED] is presently developed at the [REDACTED] at the [REDACTED], Part of its development (until 02/07) was based upon work supported by the National Science Foundation under Grant No. [REDACTED]" The article does not mention the petitioner by name. Moreover, although counsel has provided evidence that the software was downloaded 1,509 times by unidentified individuals from October 2006 to March 2011, counsel has not explained how this information establishes the petitioner's role, let alone a leading or critical role, for the [REDACTED]

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed a leading or critical role for organizations and establishments, in plural, with a distinguished reputation. This requirement is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that the petitioner has performed a leading or critical role for the [REDACTED], it would not conclude that he has met this criterion, because the record lacks evidence showing that the petitioner has performed a leading or critical role for a second organization or establishment that has a distinguished reputation.

Accordingly, based on the petitioner's evidence, the AAO finds that he has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, counsel asserts that the petitioner meets this criterion. As supporting evidence, the petitioner has provided: (1) a June 23, 2009 letter from [REDACTED], indicating that the petitioner's 12-month salary starting from July 2009 was \$97,792, (2) the petitioner's Form W-2 Wage and Tax Statements for 2006, 2008 and 2009, (3) the petitioner's Maryland Resident Tax Returns for 2006 and 2007, (4) an online printout from flcdatcenter.com relating to salary information for biological scientists in the Bethesda, Gaithersburg and Frederick areas in Maryland, and (5) an incomplete April 2008 online printout from Inside Higher Ed, entitled [REDACTED].

Based on the evidence in the record, the AAO finds that the petitioner has not met this criterion. First, the flcdatcenter.com printout relates to wages between July 2010 and June 2011. The petitioner, however, has provided evidence on his salary from 2006 to 2009, not his 2010 or 2011 salary. Second, the flcdatcenter.com printout relates to the salary of biological scientists, not a position held by the petitioner, which was an assistant professor. Regardless, the level 4 wage in this occupation is \$107,162, which is more than the petitioner's salary. Although on appeal, counsel claims that the petitioner's assistant professor position is comparable to a biological scientist, counsel has not presented any evidence to support his assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Third, the flcdatcenter.com printout is limited to the Bethesda, Gaithersburg and Frederick areas in Maryland. As such, even if the AAO were to find that the online printout relates to the petitioner's salary in the relevant year and work, the AAO would be without sufficient evidence to conclude what is an average salary of someone in the field nationally.

Fourth, the petitioner has not presented sufficient evidence showing that the information contained in the April 2008 article [REDACTED] is accurate or reliable, or evidence that Inside Higher Ed is a reputable publication. Fifth, although the article provides the average salary for an assistant professor, it does not provide any salary information specifically for someone who is a bioengineering assistant professor. Counsel also has not provided any document showing that the specific academic area of an assistant professor is irrelevant to the average salary of the assistant professor. Regardless, the article lists the average salary for assistant professors as \$61,359 but the third column, which is partially obliterated, shows a salary of over \$96,000. Without the complete article, however, the AAO cannot determine what the third column represents. Moreover, the plain language of the regulation requires a comparison of the petitioner's salary with others in the field, not the occupation. The petitioner's field includes not just assistant professors, but also full professors.

Sixth, the AAO declines to consider the petitioner's grant from [REDACTED] as part of his salary or remuneration for services, because other than counsel's assertion, the record contains no evidence in support of such a finding. In fact, [REDACTED] states that only \$24,448 of the petitioner's total salary derived from contracts and grants. While pertaining to a different year, [REDACTED]

letter reveals that the majority of grant money funding research does not go the principal investigator's salary or other remuneration for services. Finally, evidence of the average wage in an occupation does not demonstrate what a high wage is in that occupation. Merely documenting wages above the average wage in the occupation is insufficient evidence under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence of a high salary or other significantly high remuneration in relation to others in the field.

Accordingly, the AAO finds that the petitioner has not presented evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field of advance computation in biological engineering. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ix).

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or his achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); see also *Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁵ The AAO maintains *de novo* review of all questions of fact and law. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.